

Utah Securities Commission

Meeting Minutes

March 26th, 2015

Division of Securities Staff Present

Keith Woodwell, Division Director
LeeAnn Clark, Commission Secretary
Dave Hermansen, Enforcement Director
Kenneth Barton, Compliance Director
Benjamin Johnson, Licensing & Registration Director
Dee Johnson, Investor Education Director
Karen McMullin, Investor Education Coordinator
Charles Lyons, Securities Analyst
Brooke Winters, Securities Analyst
Matt Edwards, Securities Investigator
Taylor Kauffman, Securities Investigator
KristiLyn Wilkinson, Securities Investigator
Russ Bulloch, Securities Examiner
Andreo Micic, Securities Examiner
Nathan Summers, Securities Examiner
Bryan Cowley, Securities Examiner
Heidie George, Securities Examiner
Nadene Adams, Administrative Assistant
Sally Stewart, Office Specialist II

Other State of Utah Employees:

Jennie Jonsson, Administrative Law Judge, Department of Commerce
Tom Melton, Assistant Attorney General
Julie Price, Executive Assistant, Department of Commerce

Commissioners Present

Erik Christiansen, Parsons Behle & Latimer
Tim Bangerter, Landmark Wealth Advisors
Gary Cornia, Brigham Young University (participated by telephone)
David Russon, Investment Management Consultants
Brent Baker, Clyde, Snow & Sessions

Minutes: At 9:07 am the meeting was called to order by Commissioner **Erik Christiansen**. Commissioner **Brent Baker** made the motion to approve the minutes from the January 22, 2015 Commission meeting. The motion was seconded and carried.

Director's Report:

Division of Securities Staff: Director Woodwell reported that the following new employees have joined the Division: (1) Bryan Cowley as an examiner in the Licensing and Registration Section; (2) Taylor Kauffman as a new investigator in the Enforcement Section; (3) Brooke Winters as a new analyst in the Enforcement Section; and (4) LeeAnn Clark as the new Commission Secretary. Director Woodwell provided a brief introduction of all the new Division employees. Director Woodwell noted that the Division is fully staffed.

Legislative Activity: Director Woodwell presented an update on the recent 2015 Legislative session. He reviewed the Expungement Bills: HB109, the bill did not pass, had a committee hearing in the House but failed the committee vote; HB40, the bill passed the House but died in the Senate on the last day. The bill seeking to carve out certain LLCs and promissory notes from the definition of a "security" under the Act (HB62) was pulled by the sponsor and never received a public hearing. The Crowdfunding bill (HB50) had a House committee hearing but was held in committee. The Crowdfunding bill may return in the next legislative session. Director Woodwell also presented HB378, White Collar Crime Registry. The bill was passed and signed by the Governor, with Division support. This bill modifies the Utah Code of Criminal Procedure to create a public registry of persons who commit specified white collar crimes (similar to the sex offender registry). The Attorney General's office will create and maintain the registry.

Commission Terms: The terms of Commissioners Brent Baker and Tim Bangerter expire in May 2015. Commissioner Brent Baker will be recommended for a second term. Commissioner Tim Bangerter has already completed a second term as commissioner and will be honored at the next meeting in May. Director Woodwell noted that the Division is working with the Governor's Office to appoint a new commissioner to fill the spot of Commissioner Bangerter.

Future Commission meeting dates: May 28, 2015 at 9am, August 27, 2015 at 9am, September 24, 2015 at 10am and December 3, 2015 at 9am.

Enforcement Section Report: Dave Hermansen reported that the Enforcement Section has 35 open cases and 12 new cases which are currently unassigned. Mr. Hermansen stated that during the past month the Enforcement Section has filed two new cases involving criminal charges. Mr. Hermansen reported that the Enforcement Section has several criminal cases coming to trial within the near future. On May 7, 2015 the Division will be hosting a task force meeting with the Utah Attorney General's Criminal Unit, US Attorney's Office, SEC, County Attorney's Office, the FBI and the IRS to provide information to assure that there is no duplication of efforts.

Compliance Section Report: Ken Barton reported Audit Statistics YTD 2015. The Compliance Section has initiated a total of 11 new audits. Four audits were for-cause audits triggered by investor complaints; seven were routine audits of both investment advisor firms and broker-dealer branch offices. The Section has eight administrative enforcement actions in progress. Mr. Barton also provided updates on two criminal cases from the Compliance Section moving forward in 3rd District Court.

Registration and Licensing Section Report: Benjamin Johnson reported that the operations for the new electronic filing depository system (EFD) continue to proceed. Year-to-date, the Division has received 54 Form D filings through the EFD filing system. Mr. Johnson commented that the Division will continue to allow the electronic filing system and paper filings as options, and will not require electronic filing until all of the problems and bugs in the system are worked out. Mr. Johnson commended his administrative assistant, Nadene Adams for her hard work in providing feedback and working through the problems with the EFD filing system.

Investor Education Report: Karen McMullin provided the Commission with a year-to-date education event report. Between January 22 and March 26, 2015, the Division participated in nine events and three outreach opportunities. Of these 12 events five were focused on seniors, six were focused on Educators/Students and one was a presentation for Public Employees. The estimated audience total for the 12 opportunities is 3,093. Ms. McMullin also reported that

the Division has 37 events presently booked for the remainder of 2015, 17 of which are URS Education Seminars for Public Employees in early to mid-career, pre-retirement and retirees. The Division recently received requests for presentations from the Osher Institute, the Utah Association of Certified Fraud Examiners, the Utah Financial Planning Association, and the Utah Judicial Institute. Outreach requests are increasing, especially in the area of Elder Financial Exploitation. Free resources continue to be available resulting in a significant savings to the Division. Ms. McMullin also updated the Commission on the current status of the Stock Market Game for the 2014–2015 school year. The Division of Securities will be taking over full administration of the Stock Market Game starting this fall. Ms. McMullin and Ms. Wilkinson will be attending training in New York in June to learn how to administer the Stock Market Game. Ms. McMullin reported that the Division held its first Stock Market Game teaching training seminar in February of this year. Going forward, the teacher training will be held in August at the Heber M. Wells building and there will be outreach training at two CTE conferences each year.

Grant Request for MountainWest Capital Network: Director Woodwell addressed the Commission and reviewed how previous grants to MountainWest Capital Network have been used and how the current funds requested will be spent. Director Woodwell responded to questions and indicated support for the request. The Commission approved the grant for the same amount as in the previous year: \$2,500. Commissioner **Tim Bangerter** made the motion to approve the proposed grant request. The motion was seconded and carried.

Education and Training Fund Report: Benjamin Johnson reported that spending has been fairly light since the last meeting. Due to the addition of a new part-time Enforcement Investigator, Mr. Johnson asked the Commissioners to authorize an increase in the Employment/Law Clerk/Transcriptionist expenses by \$26,327.23 for a total budget of \$40,000. Following the presentation of the Education and Training Fund Report, Commissioner **Tim Bangerter** made the motion to approve the amount for the proposed grant request. The motion was seconded and carried.

Consideration and Approval of Proposed Orders:

Gregory K. Howell: Recommended Order on Motion for Default and Order on Motion for Default: SD-09-0026.

Dave Hermansen reported that the Order to Show Cause and Notice of Agency was filed on April 16, 2009. Thereafter, the proceedings were stayed for a time. The initial stay was lifted on January 2, 2015 and the Respondent was required to file response within the ensuing 30-day period, as of the date of this order the Respondent has not filed a response. An initial hearing was held on February 4, 2015. Respondent failed to appear. Therefore, the Division is seeking a cease and desist order, a permanent securities bar for Mr. Howell and a fine of \$312,500 to the Division.

Action: Commissioner **Erik Christiansen** made the motion to approve the Recommend Order on Motion for Default and Order on Motion for Default. The motion was seconded and carried.

Dustin Endsley: Recommended Order on Motion for Default and Order on Motion for Default: SD-15-0002

Fusion Energy, LLC: Recommended Order on Motion for Default and Order on Motion for Default: SD-15-0001

Dave Hermansen reported that the Order to Show Cause and the Notice of Agency was initially filed on January 7, 2015. Respondents were required to file a response to the Order to Show Cause within the ensuing 30-day period. As of the date of this order, Respondents have not filed a response. An initial hearing was held February 13, 2015. Respondents failed to appear.

Therefore, the Division is seeking a cease and desist order, a permanent securities bar against Mr. Endsley, and a fine of \$246,877.97 to the Division.

Action: Commissioner **Dave Russon** made the motion to approve the Recommend Order on Motion for Default and Order on Motion for Default. The motion was seconded and carried.

Andres Esquivel, dba XTAGGED: Recommended Order on Motion for Default and Order on Motion for Default: SD-11-0033

Dave Hermansen reported that the Order to Show Cause and the Notice of Agency was initially filed on May 11, 2011. Thereafter, the proceedings were stayed for a time, pending related criminal proceedings. The stay was lifted on December 16, 2014, and Respondent was required to file a response to the Division's Order to Show Cause within the ensuing 30-day period. As of the date of this order, Respondent has not filed a response. An initial hearing was held on February 4, 2015. Respondent failed to appear. Therefore, the Division is seeking a cease and desist order, a permanent securities bar against Mr. Esquivel, and a fine of \$16,250 to the Division.

Action: Commissioner **Tim Bangerter** made the motion to approve the Recommend Order on Motion for Default and Order on Motion for Default. The motion was seconded and carried.

Robert R. Ty: Recommended Order on Motion for Default and Order on Motion for Default: SD-08-0009

Dave Hermansen reported that the Order to Show Cause and the Notice of Agency was initially filed on December 8, 2008. Thereafter, the proceedings were stayed for a time, pending related criminal proceedings. The stay was lifted on December 16, 2014, and Respondent was required to file a response to the Division's Order to Show Cause within the ensuing 30-day period. As of the date of this order, Respondent has not filed a response. An initial hearing was held on February 4, 2015. Respondent failed to appear. Therefore, the Division is seeking a cease and desist order, a permanent bar against Mr. Ty, and a fine of \$625,000 to the Division.

Action: Commissioner **Brent Baker** made the motion to approve the Recommend Order on Motion for Default and Order on Motion for Default. The motion was seconded and carried.

Nolen Paul Isom: Recommended Order on Motion for Default and Order on Motion for Default: SD-14-0013

Senergy Technology, LC: Recommended Order on Motion for Default and Order on Motion for Default: SD-14-0014

Senergy Investments, LC: Recommended Order on Motion for Default and Order on Motion for Default: SD-14-0015

Senergy Systems, LC: Recommended Order on Motion for Default and Order on Motion for Default: SD-14-0016

Greenstep, LC: Recommended Order on Motion for Default and Order on Motion for Default: SD-14-0017

Dave Hermansen reported that the Order to Show Cause and the Notice of Agency was initially filed on June 2, 2014. Thereafter, the proceedings were stayed for a time, pending related criminal proceedings. The stay was lifted on January 12, 2015, and Respondents was required to file a response to the Division's Order to Show Cause within the ensuing 30-day period. As of the date of this order, Respondent has not filed a response. An initial hearing was held on March 4, 2015; Respondents failed to appear. Therefore, the Division is seeking a cease and desist order, a permanent securities bar against Mr. Isom, and a fine of \$45,192 to the Division.

Action: Commissioner **Dave Russon** made the motion to approve the Recommend Order on Motion for Default and Order on Motion for Default. The motion was seconded and carried.

Synergy Funding, LLC: Recommended Order on Motion for Default and Order on Motion for Default: SD-008-0045

Joshua Paul Chapman: Recommended Order on Motion for Default and Order on Motion for Default: SD-008-0046

Dave Hermansen reported that the Order to Show Cause and the Notice of Agency was initially filed on April 22, 2008. Thereafter, the proceedings were stayed for a time, pending related criminal proceedings. The stay was lifted on December 16, 2014, and Respondents was required to file a response to the Division's Order to Show Cause within the ensuing 30-day period. As of the date of this order, Respondent has not filed a response. An initial hearing was held on February 4, 2015; Respondents failed to appear. Therefore, the Division is seeking a cease and desist order, a permanent securities bar against Mr. Chapman, and a fine of \$262,500 to the Division.

Action: Commissioner **Dave Russon** made the motion to approve the Recommend Order on Motion for Default and Order on Motion for Default. The motion was seconded and carried.

Jeffrey L. Miller: Order on Motion to Exclude Evidence and Other Relief and Recommended Order on Default. Order on Motion on Default: SD-14-0035.

Dave Hermansen reported that the Order to Show Cause and the Notice of Agency was filed on or about August 2, 2014. On October 1, 2014, a scheduling order was issued requiring the Respondent to file initial disclosures by October 15, 2014 and final disclosures by February 12, 2015. Respondent has not filed initial disclosures or final disclosures. In response to the Division's Motion to Exclude Evidence and Other Relief, on March 13, 2015, Respondent sent a short letter denying any knowledge of the proceedings or events involved. Therefore, the Division is seeking a cease and desist order, a permanent securities bar against Mr. Miller and a fine of \$35,000.

Action: Commissioner **Brent Baker** made the motion to approve the Recommend Order on Motion for Default and Order on Motion for Default. The motion was seconded and carried.

Bradley Jackson Neufeld: Stipulation and Consent: SD-14-0061

Affinity Guidance Services, LLC: Stipulation and Consent: SD-14-0062

KristiLyn Wilkinson reported that the Order to Show Cause and the Notice of Agency was filed on or about December 12, 2014. The Division's investigation revealed that Respondent offered and sold a promissory note and an interest in a limited liability company to two investors, husband and wife, collecting a total of \$20,000 in investment funds. Respondent is alleged to have made material misstatements and omissions to the investors. As part of the stipulation reached with the Respondents, they neither admit nor deny the Division's findings of fact and conclusions of the law but consent to the sanctions imposed in the Consent Order. The proposed Consent Order imposes a cease and desist order, a permanent securities bar against Mr. Neufeld, and a joint and several fine of \$30,000 against the Respondents, to be offset by payments of restitution to the investors.

Action: Commissioner **Tim Bangerter** made the motion to approve the Stipulation and Consent. The motion was seconded and carried.

Yaede & Sons, LLC: Stipulation and Consent: SD-14-0057

Jeff S. Yaede: Stipulation and Consent: SD-14-0058

George H. Yaede, JR.: Stipulation and Consent: SD-14-0059

John R. Yaede: Stipulation and Consent: SD-14-0060

Kenneth Barton reported that the Division initiated an Order to Show Cause on or about December 11, 2014. The unlicensed Respondents are alleged to have offered and sold securities to one or more investors and collected a total of \$352,511. Respondents are also

alleged to have made material misstatements and omissions. As part of the stipulation reached with the Respondents, they neither admit nor deny the Division's allegations, but agree to the sanctions imposed by the Consent Order. The proposed Consent Order imposes a cease and desist and desist order and imposes a jointly and several fine of \$25,000 against all Respondents. The fine shall be reduced on a dollar-for-dollar basis up to \$15,000 for any restitution payments Respondents make to the Utah investor.

Action: Commissioner **Brent Baker** made the motion to approve the Stipulation and Consent. The motion was seconded and carried.

Commissioner **Tim Bangerter** made the motion to adjourn the meeting. The motion was seconded and carried. The meeting was adjourned at 10:05am.

Pending Approval